

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04-CF-141

CHAI S. VANG,

Defendant.

STATE'S MOTION IN LIMINE

The State of Wisconsin, by its attorneys, Attorney General Peggy A. Lautenschlager and Assistant Attorneys General Roy R. Korte and Donald V. Latorraca, Assistant Attorneys General and Special Prosecutors for Sawyer County, hereby moves the court for the following orders:

1. For an order prohibiting any persons from photographing or videotaping witnesses at their request. SCR 61.11 allows a court to prohibit the photographing of witnesses:

A trial judge may for cause prohibit the audio recording and the photographing of a participant with a film, videotape or still camera on the judge's own motion or on the request of a participant in a court proceeding. In cases involving the victims of crimes, including sex crimes, police informants, undercover agents, relocated witnesses and juveniles, and in evidentiary suppression hearings, divorce proceedings and cases involving trade secrets, a presumption of validity attends the requests; the trial judge shall exercise a broad discretion in deciding whether there is cause for prohibition. This list of requests which enjoy the presumption is not

exclusive; the judge may in his or her discretion find cause in comparable situations.

The state will identify the witnesses who have requested that their images not be recorded or photographed or the voices recorded prior to trial.

2. For an order prohibiting media from covering proceedings in a manner inconsistent with Chapter SCR 61, "Rules Governing Electronic Media and Still Photography Coverage of Judicial Proceedings." Specifically, the state requests the court to limit the number and location of any cameras in the courtroom as specified under SCR 61.03-06. As grounds for this motion, compliance with the rules will ensure that jurors will focus on the testimony of witnesses and the media presence will not disrupt witness testimony.

3. For an order prohibiting the defendant, Chai S. Vang ("Vang"), from making any reference to the potential penalties for the charged offenses, the degree of offenses (felony or misdemeanor), other possible charges that could have been issued and to any potential dispositions of this case.

4. For an order prohibiting Vang from commenting on the presence or absence of a witness's criminal record without a prior hearing by the court outside the presence of the jury. Wis. Stat. § 906.09(3).

5. For an order prohibiting Vang from commenting on his lack of prior convictions. The absence of a criminal record is not evidence of a person's law-abiding character. *See* Wis. Stat. §§ 904.04(1) and 904.05(1). *State v. Bedker*, 149 Wis. 2d 257, 268, 440 N.W.2d 802 (Ct. App. 1989) ("Lawless persons may avoid convictions").

6. For an order allowing the jurors, pursuant to Wis. Stat. § 972.10(1), to take notes of the witness's testimony. The basis of the state's motion is Wis. Stat. § 972.10(1)(a), which provides that a court "shall determine if the jurors may take notes of the proceedings." Where note taking is not permitted, a court must "state the reasons for the determination on the record." Wis. Stat. § 972.10(1)(a)(2). Should the court permit the jurors to take notes, the state proposes that the court instruct the jury pursuant to Wis. JI—Criminal 55 (1991).

7. For an order requiring the parties during voir dire to identify all witnesses they intend to call at trial. The basis for the state's motion is to ensure that any potential juror does not have any relationship with any witness that may make the juror unable to be fair and impartial.

8. In the event Vang requests the exclusion of witnesses pursuant to Wis. Stat. § 906.15, for an order that excepts from such exclusion law enforcement officers whose presence is essential to the presentation of the state's case. The state will designate those witnesses prior to trial.

9. For an order prohibiting Vang from introducing any "other acts" evidence regarding any witness or the victim, under Wis. Stat. § 904.04(2), unless and until a hearing is first held outside the jury's presence as to the admissibility of such evidence. In addressing the admissibility of "other acts" evidence under Wis. Stat. § 904.04, courts apply the three-step analytical framework set forth in *State v. Sullivan*, 216 Wis. 2d 768, 772-73, 576 N.W.2d 30 (1998):

(1) Is the other acts evidence offered for an acceptable purpose under Wis. Stat. § (Rule) 904.04(2), such as establishing motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident?

(2) Is the other acts evidence relevant, considering the two facets of relevance set forth in Wis. Stat. § (Rule) 904.01. The first consideration in assessing relevance is whether the other acts evidence relates to a fact or proposition that is of consequence to the determination of the action. The second consideration in assessing relevance is whether the evidence has probative value, that is, whether the other acts evidence has a tendency to make the consequential fact or proposition more probable or less probable than it would be without the evidence.

(3) Is the probative value of the other acts evidence substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence? *See* Wis. Stat. § (Rule) 904.03.

10. For an order prohibiting the defendant from introducing any character evidence of a witness or the victim for the purpose of establishing that a person acted in conformity with that character on a particular occasion unless the defendant complies with the requirements of Wis. Stat. § 904.04(1).

11. For an order prohibiting the defendant from introducing any character evidence relating to the credibility of any witness without complying with the requirements of Wis. Stat. §§ 906.08(1) and 904.03. Before Vang conducts any cross-examination regarding specific instances of a witness's conduct, the court should make a determination about the proffered evidence to determine whether it meets the criteria necessary for admission under Wis. Stat. §§ 906.08(2) and 904.03. Finally, this court should preclude Vang from introducing extrinsic evidence to prove specific instances of a

witness's conduct for the purpose of attacking the witness' character for truthfulness.

Wis. Stat. § 906.08(2).

12. For an order prohibiting the defendant from introducing specific acts related to the credibility of any witness without complying with the requirements of § 906.08(2). See the discussion in ¶ 13 above.

Dated this 10th day of May, 2005.



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